

CHAPTER 11:

ACCESS TO COURT RECORDS

**Juvenile Probation Officer and Caseworker
Self-Instructional Manual**

FAMILY DIVISION RECORDS

Access to juvenile delinquency records is addressed in the Nonpublic and Limited-Access Court Records document located on-line at:

http://courts.michigan.gov/scao/resources/standards/cf_chart.pdf

Records retention and destruction schedules are addressed in SCAO Schedule 16. Schedule 16 may be found on-line at:

http://courts.mi.gov/scao/resources/standards/cf_schd.pdf

This schedule outlines the minimum (and in some cases the maximum) periods for the retention of trial court records.

Definition

“Records” include both paper and electronic files, and are defined as pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, register of actions (the permanent case history), and court orders. These items are contained in the so-called “legal file”. Confidential information is contained in the so-called “social file” MCR 3.903(A)(24).



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The general rule is that records of juvenile cases, other than confidential files, must be open to the general public. MCR 3.925(D)(1).

As previously stated, **confidential file** means:

that part of a file made confidential by statute or court rule, and includes

- (i) diversion records. MCL 722.821 *et seq.* ;
- (ii) the separate statement about known victims as required by the CVRA.
MCL 780.751 *et seq.*;
- (iii) testimony taken during a closed proceeding. MCR 3.925(A)(2);
MCL 712A.17(7);
- (iv) dispositional reports. MCR 3.943(C)(3); MCR 3.973.(E)(4);
- (v) fingerprinting material required to be maintained. MCL 28.243;
- (vi) reports of sexually motivated crimes. MCL 28.247;
- (vii) test results of those charged with certain sexual offenses or substance abuse offenses. MCL 333.5129; and the Social File.

Petitions that the court has not authorized for filing do not fall within the definition of “records” in MCR 3.903(A)(24)* and are therefore “confidential files.”



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The Social File includes materials such as:

- (i) youth and family record fact sheet;
- (ii) social study;
- (iii) reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school and police reports);
- (iv) DHS records;
- (v) correspondence;
- (vi) victim statements; and
- (vii) information regarding the identity or location of a foster parent, preadoptive parent, or relative caregiver, or juvenile guardian. MCR 3.903(A)(3)(b).

Note: No provision of the Juvenile Code makes confidential a juvenile probation or court officer's file. A juvenile probation or court officer's file may contain case notes and copies of records whose confidentiality is protected by other law. MCL 791.229 contains a "probation officer's privilege," but is only applicable to Department of Corrections probation officers.



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Access to Confidential File

Confidential files are to be made accessible only to persons found by the court to have a legitimate interest. MCR 3.925(D)(2). In determining whether a person has a legitimate interest, the court must consider:

- the nature of the proceedings;
- the welfare and safety of the public;
- the interests of the juvenile; and,
- any restriction imposed by state or federal law.

Access to Drug Treatment Court File

If a juvenile successfully completes participation in a drug treatment court and the proceedings are discharged and dismissed, all records are closed to the public and are exempt from the Freedom of Information Act. MCL 600.1076(6).



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ACCESS TO RECORDS OF CLOSED PROCEEDINGS

Delinquency Cases

If a hearing is closed to the public under MCL 712A.17, the records of the hearing shall only be open by order of the court to persons having a legitimate interest. MCL 712A.28(2).

Juvenile Diversion Cases

Diversion records are “confidential files” open only to law enforcement agencies, court intake workers and persons having a legitimate interest. MCL 722.827; MCL 722.828(1)-(2) and 722.829(1); MCR 3.903(A)(3)(a)(i).

Permanent Record of Cases Heard on the Formal Calendar

The court is required to preserve several records of cases heard on the formal calendar.

The court is required to retain the register of actions and if the juvenile was represented by an attorney or waived representation. MCR 3.925(E)(2)(d).

Use of Evidence and Records in Subsequent Proceedings

Evidence regarding the disposition of a juvenile and evidence obtained in a dispositional proceeding shall not be used against the juvenile, except in a subsequent case against the juvenile under the Juvenile Code. MCL 712A.23.



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DESTRUCTION OF RECORDS

Destruction of a File Does Not Negate, Rescind, or Set Aside the Adjudication

Under MCR 3.925(E)(1), the court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e (2) which states:

A judge shall not set aside any of the following:

- (a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.
- (b) An adjudication for a traffic offense under the Michigan Vehicle Code (MCL 257.1 to 257.923) or a local ordinance substantially corresponding to that act that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.
- (c) A conviction under section 2d (“specified juvenile violation”).

A “register of actions” must not be destroyed. MCR 3.925(E)(2)(b).

Destruction of Records

Except for diversion and consent calendar records, the court must destroy all the files and records pertaining to a person’s juvenile offenses when the person becomes 30 years old. MCR 3.925(E)(2)(c).



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Diversion Records

Diversion records are to be destroyed within 28 days after the juvenile's 17th birthday. MCR 3.925(E)(2)(a).

Consent Calendar Records

1. Upon successful completion by the juvenile of the case plan, the court shall close the case and may destroy all records of the proceedings. MCR 3.932(C)(7).
2. The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later. MCR 3.925(E)(2)(b).

